

Rule 701. Opinion Testimony by Lay Witness

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness; (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

(Amended effective January 1, 1990; amended effective July 1, 2016.)

Committee Comment - 1977

The rule is consistent with existing practice in Minnesota. The rule permits testimony by means of opinion and inference when it is based on firsthand knowledge and will be helpful to an effective presentation of the issues. Because the distinction between fact and opinion is frequently impossible to delineate, the rule is stated in the nature of a general principle, leaving specific application to the discretion of the trial court.

Committee Comment - 2016

Rule 701(c) comes from the 2000 amendment to the Federal Rules of Evidence. Parties should not avoid the foundational requirements of Rule 702 and the pre-trial disclosure requirements of Minn. R. Civ. P. 26.01(b) and Minn. R. Crim. P. 9.01, 9.02 by introducing testimony based on scientific, technical, or specialized knowledge under this rule. The rule addresses the nature of the testimony, and is not an attempt to characterize a particular witness. As stated in the Federal Advisory Committee Note:

The amendment does not distinguish between expert and lay witnesses, but rather between expert and lay testimony. Certainly it is possible for the same witness to provide both lay and expert testimony in a single case. See, e.g., United States v. Figueroa-Lopez, 125 F.3d 1241, 1246 (9th Cir. 1997) (law enforcement agents could testify that the defendant was acting suspiciously, without being qualified as experts; however, the rules on experts were applicable where the agents testified on the basis of extensive experience that the defendant was using code words to refer to drug quantities and prices).

Non-expert inference or opinion testimony tends to fit into two separate categories. First, as a matter of necessity, witnesses may testify in the form of a generalized opinion about common matters they observed such as speed, size, distance, how they felt or how others appeared, intoxication, mental ability and numerous other subjects, if helpful.

The second category involves testimony from a skilled layman. The Federal Advisory Committee Note describes this as testimony, not based on specialized knowledge, but based on "particularized knowledge" developed in day-to-day affairs, including testimony from an owner about the value of a business, house, or chattel. See, e.g., Vreeman v. Davis, 348 N.W.2d 756, 757-58 (Minn. 1984) (allowing owner to testify about the value of a mobile home); Ptacek v. Earthsoils, Inc., 844 N.W.2d 535, 539-40 (Minn. Ct. App. 2014) (allowing experienced farmers to testify about the cause of their crop failure).

The amendment is not a change from past practice but is designed to assist lawyers and judges in the line-drawing process distinguishing between lay and expert testimony. In deciding whether the testimony fits under Rule 701 or 702, the trial judge should initially consider the complexity of the subject area, although some subject areas, such as handwriting or intoxication, are susceptible to both lay and expert testimony. The inquiry should center on the extent to which the testimony involves "inferences or thought processes not common to everyday life." See State v. Brown, 836

S.W.2d 530, 549 (Tenn. 1992) ("The distinction between an expert and a non-expert witness is that a non-expert witness's testimony results from a process of reasoning familiar in everyday life, and an expert's testimony results from a process of reasoning which can be mastered only by specialists in the field.").

Finally, to qualify under Rule 701 both the witness' understanding about the historical facts as well as the underlying foundation for making the inference or opinion must derive from the witness' personal experience and personal knowledge. See Pierson v. Edstrom, 160 N.W.2d 563, 566 (Minn. 1968) (precluding police officer, who was not an eyewitness to the accident, from testifying about the speed of the vehicle); Marsh v. Henriksen, 7 N.W.2d 387, 389 (Minn. 1942) (excluding passenger's testimony about the speed of a car when the witness lacked personal knowledge and experience to judge speed at the time of the accident).